

2020

United States District Court Eastern District of New York

ALTERNATIVE DISPUTE RESOLUTION REPORT JANUARY 1, 2020 – DECEMBER 31, 2020

ROBYN WEINSTEIN, ADR ADMINISTRATOR
HON. ROBERT M. LEVY, USMJ, ADR OVERSIGHT JUDGE
DOUGLAS C. PALMER, CLERK OF COURT

EDNY ADR DEPARTMENT | 225 CADMAN PLAZA EAST BROOKLYN, NY 11201

PROGRAM OVERVIEW

The Eastern District of New York (EDNY) is a trial-level federal court that serves Kings, Queens, Richmond, Nassau and Suffolk Counties, with courthouses located in Brooklyn and Central Islip. The EDNY Alternative Dispute Resolution (ADR) Department administers mediation and arbitration services for civil cases filed in the EDNY. The ADR Department is overseen by the ADR Oversight Judge and the ADR Administrator, as well as Arbitration Clerk, Rita Credle, and ADR Clerk, Tina Priftakis.

MEDIATION PROGRAM

PANEL MEDIATORS

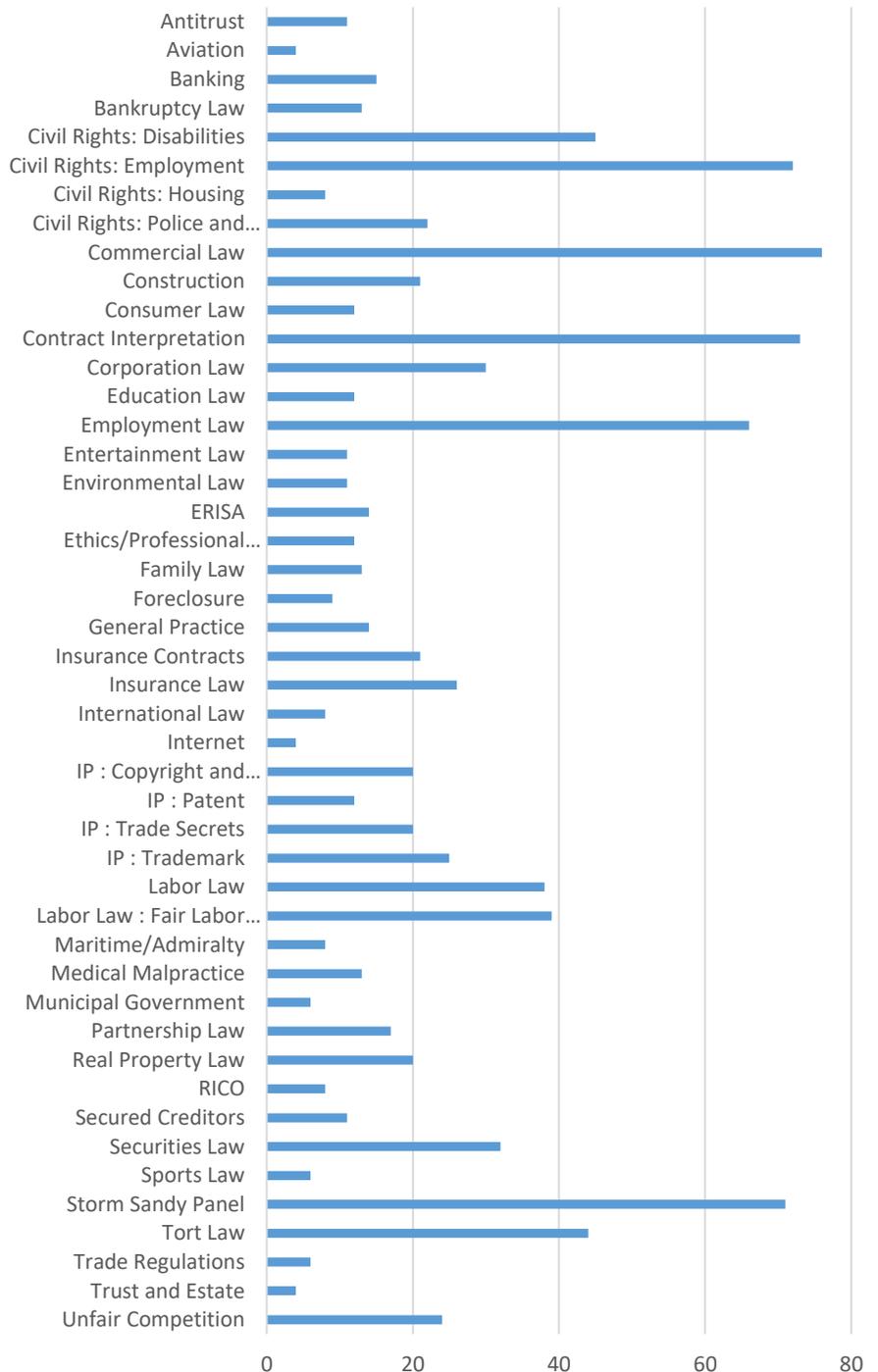
There are 160 mediators on the EDNY Mediation Panel. EDNY litigants may review biographies for EDNY Mediation Panel members on the EDNY ADR Website at: <https://www.nyed.uscourts.gov/adr/Mediation/displayAll.cfm>

The accompanying chart (right) illustrates the number of EDNY panel mediators qualified in each area of expertise. From January 1, 2020 through December 31, 2020, 124 mediators were selected to mediate 660 cases.

Of the 160 mediators on the EDNY panel, sixty-two percent (62%) were selected to mediate a case. Four percent (4%) of cases referred to the program were mediated by private mediators not listed on the EDNY Panel.

The most frequently utilized EDNY mediator conducted 79 mediations.

Panel Member Areas of Expertise

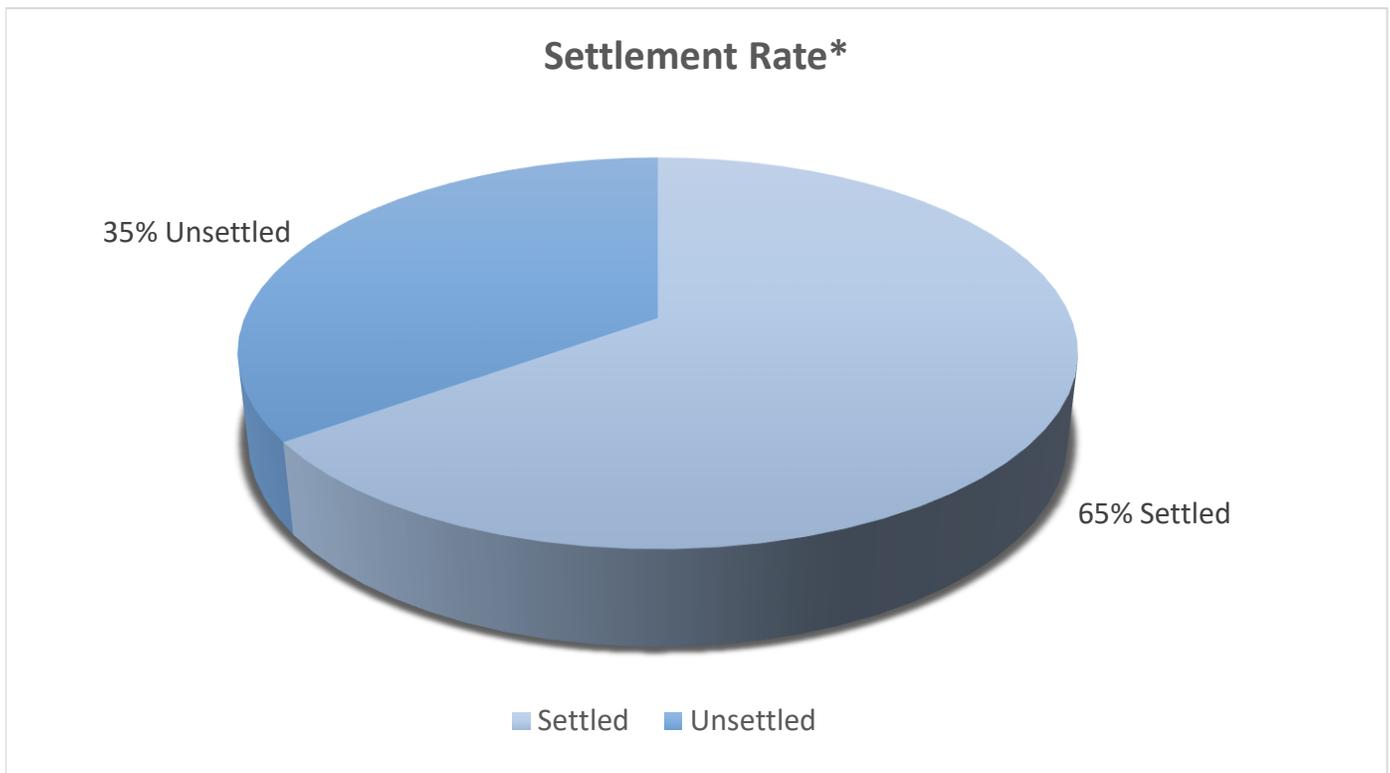


MEDIATION CASE REFERRALS

From January 1, 2020 through December 31, 2020, 745 cases were referred to the mediation program. Seventy-seven percent (77%) of mediation referrals were from the Brooklyn courthouse, and twenty-three percent (23%) were from the Central Islip courthouse. Eighty-five percent (85%) of cases were referred to mediation by Magistrate Judges, and fifteen (15%) were referred by District Judges. Mediation referrals increased by eight percent (8%) in comparison to the same reporting period last year.

MEDIATION SETTLEMENT RATES AND CASE STATUS

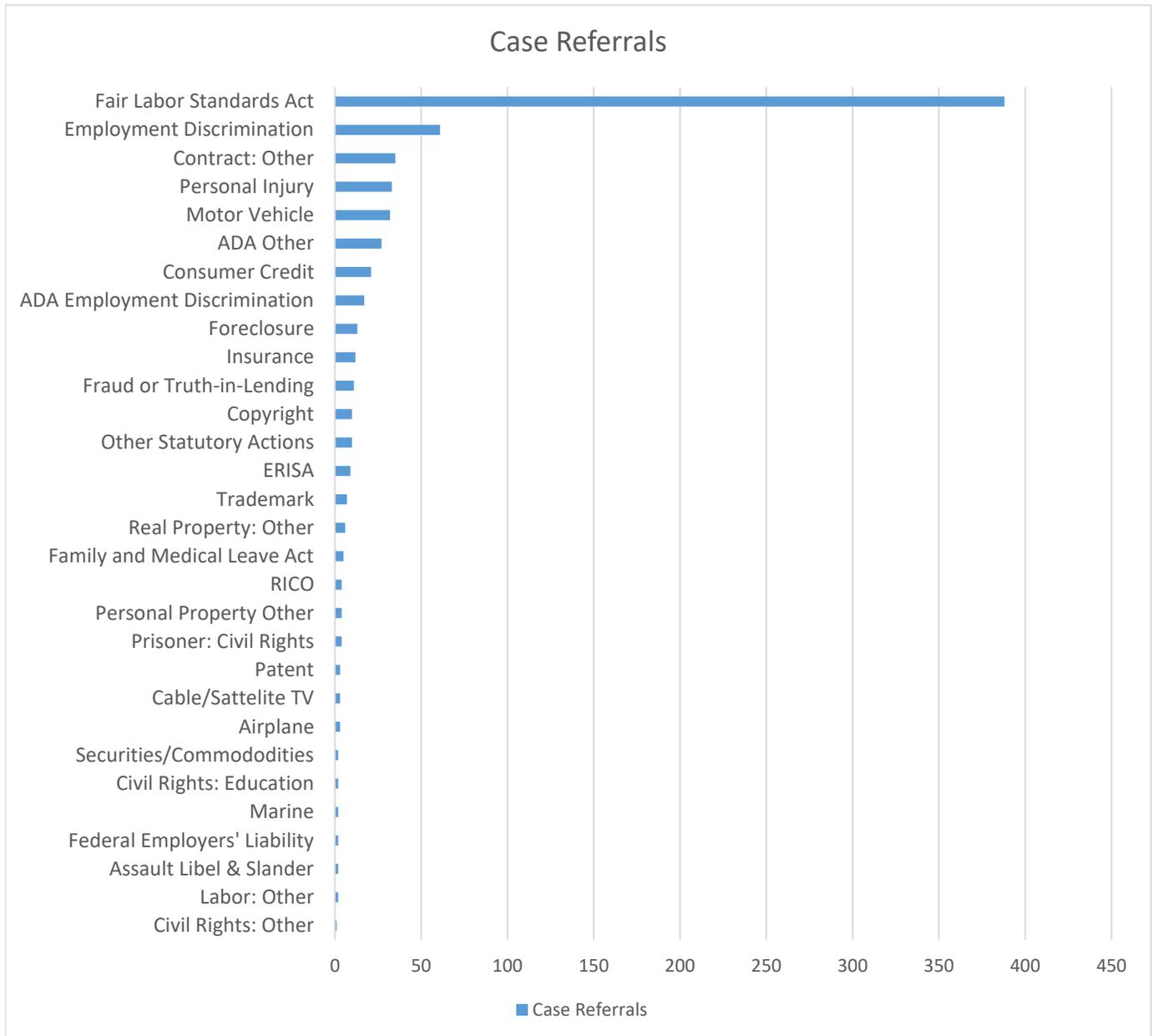
Sixty-five percent (65%) of all cases referred to the mediation program were settled. Of those cases referred to the mediation program, a mediation session was completed in 600 cases.



*This settlement rate includes matters that were resolved at the completion of a mediation session, as well as matters that resolved after a referral to the mediation program but prior to a formal mediation session. Some of the matters that resolved prior to a mediation session were resolved with mediator assistance and others were resolved through direct negotiation by the parties.

MEDIATION REFERRAL BY CAUSE OF ACTION

The following chart outlines the referrals to the mediation program by cause of action.



Cases filed under the Fair Labor Standards Act (FLSA) constitute about ten percent (10%) of the total civil filings in the District, and fifty-two percent (52%) of the mediation referrals. Three hundred and eighty-eight (388) cases referred to the mediation program were cases arising under the FLSA. Sixty-eight percent (68%) of the FLSA matters referred to mediation during the period of this report were resolved prior to or as a result of a mediation session. These cases were mediated by members of the EDNY's specialized FLSA Mediation Panel.

Employment discrimination cases are the second most common type of case referred to the EDNY mediation program. During the period of this report, 78 cases referred to the mediation program were employment discrimination matters. From January 1, 2020 through December 31, 2020, fifty-four percent (54%) of employment discrimination matters referred to mediation were resolved prior to or as a result of a mediation session.

MEDIATION SETTLEMENT RATES BY CAUSE OF ACTION

Cause of Action	Sub-Category	Percentage Settled	Settled	Unsettled	Did not Proceed to Mediation	Pending	Total
Contract Actions							
	Contract: Other	36%	9	16	4	4	33
	Insurance	55%	6	5	0	1	12
	Marine	50%	2	2	0	0	4
Real Property Actions							
	Real Property: Other	100%	2	0	1	1	4
	Real Property: Foreclosure	100%	2	0	0	0	2
Tort Actions							
	Airplane	0%	0	2	1	0	3
	Motor Vehicle	59%	13	9	8	0	30
	Personal Injury	53%	10	9	6	2	27
	Personal Injury – Medical Malpractice	50%	1	1	0	0	2
	Assault Libel & Slander	0%	0	2	0	0	2
	Personal Injury: Product Liability	100%	3	0	1	0	4
	Federal Employers’ Liability	50%	1	1	0	0	2
Personal Property							
	Truth in Lending	50%	4	4	3	0	11
	Personal Property: Other	50%	2	2	0	0	4
	Marine	100%	2	0	0	0	2
Civil Rights							
	Civil Rights: Accommodations	100%	2	0	0	0	2
	Americans with Disabilities: Other	50%	9	9	9	0	27
	Education	100%	2	0	0	0	2
	Employment	55%	27	22	11	1	61
	Prisoner: Civil Rights	50%	1	1	1	1	4
	Civil Rights: ADA Employment	75%	9	3	5	0	17

Cause of Action		Percentage Settled	Settled	Unsettled	Did not Proceed to Mediation	Pending	Total
Civil Rights Cont'd	Other Civil Rights	54%	7	6	1	0	14
Labor Laws							
	E.R.I.S.A.	50%	4	4	2	1	11
	Fair Labor Standards Act	65%	209	112	50	17	388
	Family and Medical Leave Act	100%	5	0	0	0	5
	Labor/Management Relations	100%	1	0	0	0	1
	Other Labor Litigation	0%	0	2	1	0	3
Intellectual Property							
	Copyright	100%	7	0	3	0	10
	Patent	100%	2	0	1	0	3
	Trademark	33%	2	4	1	0	7
RICO							
	RICO	0%	0	2	2	0	4
Securities							
	Securities and Commodities	100%	2	0	0	0	2
Consumer Credit							
	Consumer Credit	73%	8	3	18	0	29
Other Statutory Actions							
	Cable/Satellite TV	100%	2	0	1	0	3
	Other Statutory Actions	25%	2	6	2	0	10
						Total	745

PARTICIPANT EVALUATION OF EDNY MEDIATORS

The ADR Department requests that all counsel submit a post-mediation evaluation in order to assess each mediator's performance. From January 1, 2020 through December 31, 2020 the EDNY ADR Department received 540 evaluations.

A review of the post-mediation evaluations revealed the following data:

- 80% of respondents indicated that the mediation session had been helpful.
- 93% of respondents indicated that they would recommend their mediator to other litigants.
- 92% of respondents indicated that their mediator was prepared.
- 81% of respondents indicated that the mediator was able to help the parties engage in a meaningful discussion of the case.
- 88% of respondents indicated satisfaction with the mediator's knowledge of the law.

Overall, the responses to the post-mediation evaluations indicate satisfaction with EDNY mediators' skills, legal knowledge, and ability to facilitate meaningful discussion.

MEDIATION ADVOCACY PROGRAM AND PRO BONO MEDIATION

The EDNY ADR Department administers the court's Mediation Advocacy Program (MAP) which seeks pro bono counsel and pro bono mediators for pro se litigants in employment discrimination cases and matters arising under Section 1983. As of the publication of this report, there are 94 attorneys approved by the court to provide limited scope pro bono legal representation for pro se litigants in employment discrimination mediations.

Between January 1, 2020 and December 31, 2020, 14 cases were referred to MAP and 13 pro se litigants were matched with limited scope counsel for the purpose of mediation.

All MAP cases that proceeded to mediation were provided with pro bono mediation services. Fifty-five percent (55%) of the cases referred to MAP resolved.

The EDNY ADR Department conducts mediation advocacy trainings in order to train and recruit attorneys to participate as advocates in the EDNY MAP. On October 16, 2020 the EDNY ADR Department conducted a free virtual Section 1983 Mediation Advocacy Training in partnership with Professor Brett Dignam from the Columbia Law School Mass Incarceration Clinic. United States Magistrate Judge Lois Bloom and Professor Dignam served as co-trainers along with clinic students Ida E. Ayalew, Ashley A. Taylor, Chizoba D. Ukairo, and Caleb D. Woods. Additional trainers included Richard W. Brewster, George E. Mastoris, and Royce Russell. More than 100 individuals attended the training. The training is available to view online here: <https://totalwebcasting.com/view/?func=VOFF&id=fbc&date=2020-10-16&seq=1>

PRO BONO MEDIATION

Under EDNY Local Civil Rule 83.8 each EDNY mediator is required to conduct two pro bono mediations annually in order to remain on the EDNY Mediation Panel. During the period of this report, thirteen (13) cases were referred to the program for pro bono mediation services. This includes cases that were referred to the Mediation Advocacy Program, as well as cases where a fee waiver was granted to one or both parties by the court.

During the period from January 1, 2020 through December 31, 2020, the following EDNY Mediation Panel members provided their mediation services pro bono: Richard Brewster, Roger Briton, Barry Gold, Adam Halper, Felicia Farber, Charles M. Newman, Ronald Kreismann, Barry J. Peek, Hon. Viktor Pohorelksy (Ret.), David J. Reilly, Michael Starr.

MEDIATION PANEL ADMISSIONS

In 2020, the following individuals were competitively selected for admission to the EDNY Mediation Panel: Alfreida Kenny, Salman Ravala, Gary Shaffer.

ADR DIVERSITY INITIATIVES AND MEDIATOR INCUBATOR PILOT

The EDNY ADR Department is committed to increasing the admission and selection of diverse neutrals on the Mediation and Arbitration panels. In 2017 the EDNY ADR Advisory Council established a diversity subcommittee whose members included Deborah Reik and Cynthia Boyce.

The EDNY Advisory Council and its Diversity Subcommittee assisted the ADR Department in drafting and distributing a voluntary and anonymous demographics survey to the EDNY Mediation and Arbitration panels. Sixty-two panel members responded to the survey, and their responses serve as a baseline from which the ADR Department can work to promote greater diversity among EDNY neutrals.

The EDNY ADR Administrator also maintains membership in the ADR Inclusion Network (<https://www.adrdiversity.org/>) as well as the Diversity Sub-Committee of the New York City Bar Association Alternative Dispute Resolution Committee.

In 2019 EDNY ADR Advisory Council members Richard P. Byrne and David J. Weisenfeld worked with the EDNY ADR Administrator to develop and launch a new pilot program, entitled the EDNY Mediator Incubator. The goal of the Pilot Mediator Incubator is to offer talented junior attorneys, from a wide range of cultural, linguistic and professional backgrounds, with an opportunity to gain practical experience mediating federal cases.

To be eligible to apply, applicants must be admitted to practice in the Eastern District of New York, admitted to the Bar of the State of New York for at least five (5) years and must have completed a total of twenty-four (24) hours of mediation training. The required twenty-four (24) hours of mediation training may be the result of attendance at several distinct programs, or at one twenty-four (24) hour training.

After admission to the program, incubator candidates are required to attend an initial training and orientation session, observe a minimum of three (3) EDNY mediations, and co-mediate at least three (3) EDNY mediations with an experienced EDNY Mediation Panelist. Any observations or co-mediations done through the EDNY Mediator Incubator will be done on a pro bono basis. Each incubator candidate will be matched with an experienced mentor. After successful completion of the EDNY Mediator Incubator, candidates will be eligible for, but not guaranteed, admission to the EDNY Mediation Panel.

In March 2020 the Incubator Pilot program was placed on hold due to the Covid-19 pandemic. The Incubator Pilot was re-started in August 2020 and the following individuals completed the Program in and were subsequently admitted to the EDNY Mediation Panel in December of 2020: Alexander Bachuwa, Cyrus Dugger, Miles Orton, and Olga Pettigrew.

EDNY ARBITRATION PROGRAM

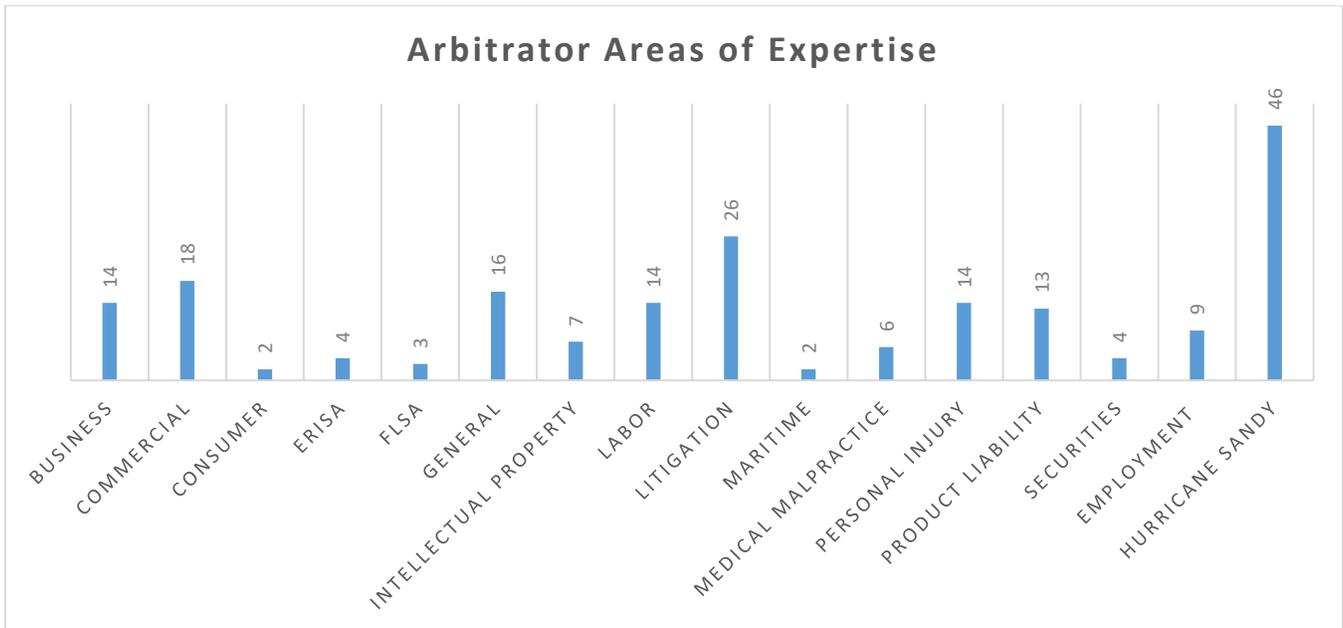
Compulsory arbitration is authorized under EDNY Local Civil Rule 83.7 for cases where money damages do not exceed \$150,000.00 (excluding social security cases, tax matters, prisoner civil rights cases and any action based on an alleged violation of a right secured by the United States Constitution or if jurisdiction is based in whole or in part on Title 28, U.S.C. § 1343). Upon issuance of an arbitration award, there is a thirty-day period during which parties may request a trial de novo.

ARBITRATION PANEL

There are sixty (60) arbitrators on the EDNY Arbitration Panel. EDNY litigants may search for and review biographies for EDNY Arbitration Panel members on the EDNY ADR Website at:

<https://www.nyed.uscourts.gov/adr/Arbitration/displayAllArb.cfm>

During the period from January 1, 2020 through December 31, 2020, eighteen (18) EDNY Panel Arbitrators were selected to arbitrate, and three (3) arbitrators conducted five (5) arbitration hearings.



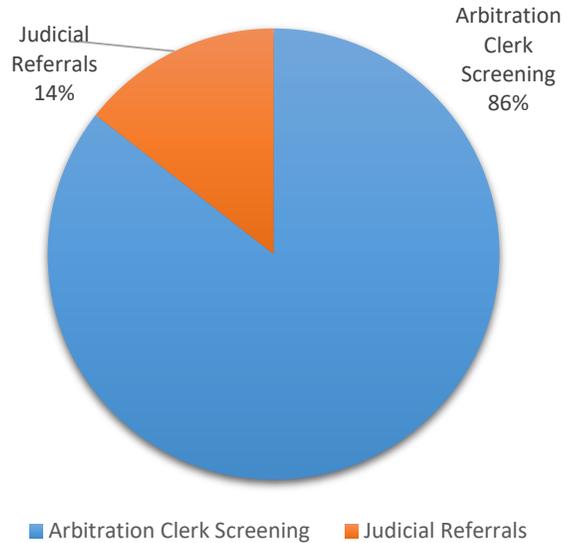
ARBITRATION CASE REFERRAL SOURCES

In accordance with Local Civil Rule 83.7(d), the EDNY Arbitration Clerk designates all civil cases for compulsory arbitration (excluding social security cases, tax matters, prisoners’ civil rights cases and any action based on an alleged violation of a right secured by the Constitution of the United States or where jurisdiction is based in whole or in part on Title 28, U.S.C. § 1343), wherein money damages only are being sought in an amount not in excess of \$150,000.00 exclusive of interest and costs.

One hundred and seventy (170) cases were referred to the EDNY court-annexed arbitration program between January 1, 2020 and December 31, 2020. Seventy-two percent (72%) of arbitration referrals were from the Brooklyn courthouse, and twenty-eight (28%) were from the Central Islip courthouse.

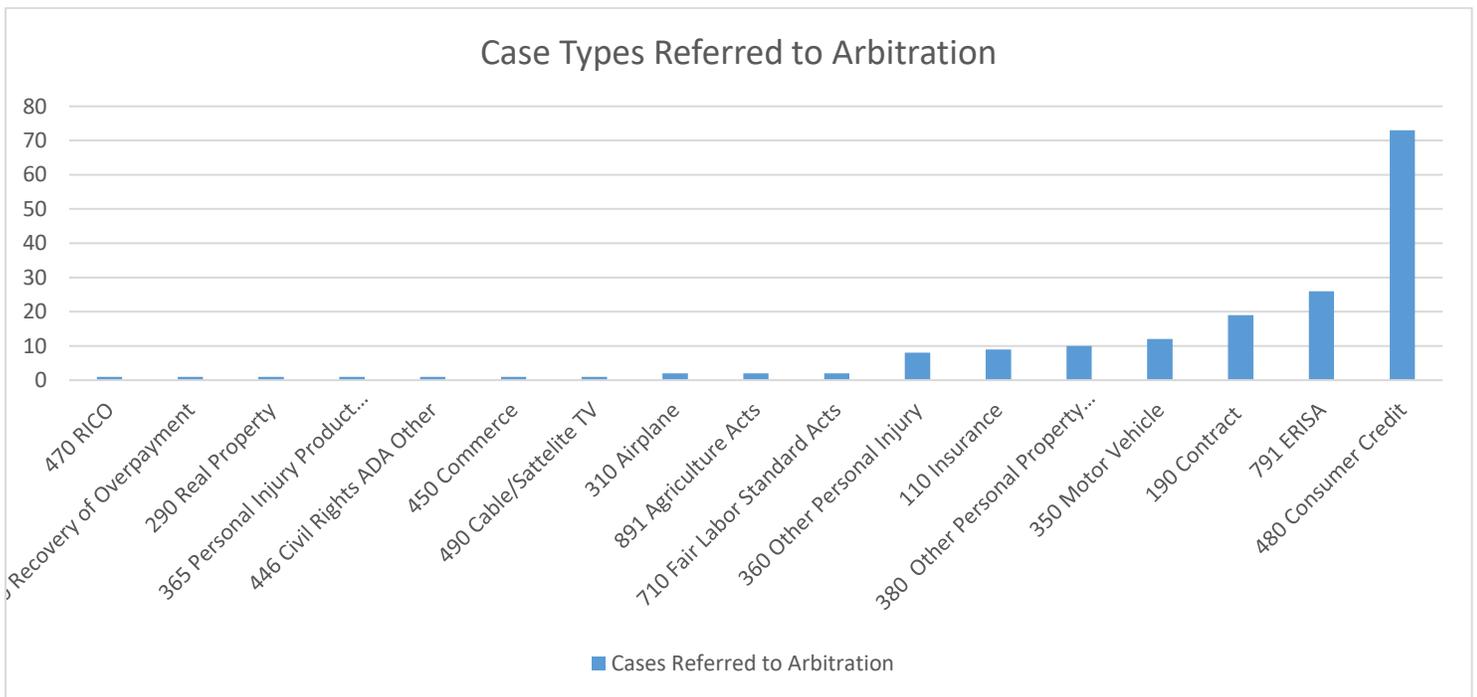
Eighty-three percent (83%) of the referrals into the arbitration program were made by the EDNY Arbitration Clerk, who screens each civil case filed in the EDNY for eligibility for the arbitration program. The remaining fourteen percent (14%) of arbitration referrals were issued by the assigned District Judge or Magistrate Judge on a case-by-case basis.

Arbitration Referral Source



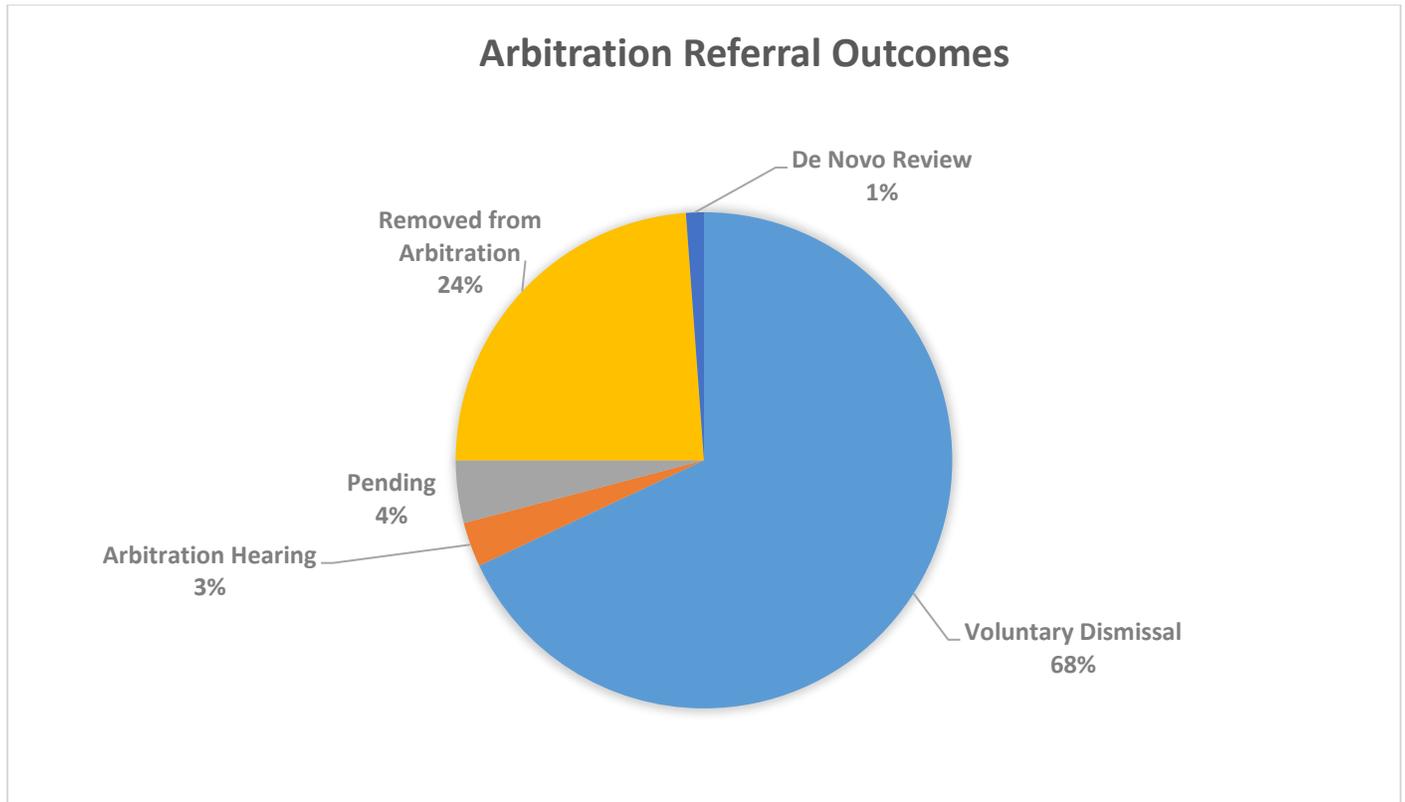
ARBITRATION REFERRALS BY CAUSE OF ACTION

The following chart illustrates the types of cases referred to the EDNY Arbitration Program. Consumer Credit cases were the most frequent referral, followed by ERISA, personal injury, personal property, motor vehicle, and insurance.



ARBITRATION OUTCOMES AND CASE STATUS

A referral to the court-annexed arbitration program is effective in encouraging parties to reach early resolution. Of the cases referred to the program where an arbitration hearing was scheduled, sixty-eight percent (68%) were voluntarily dismissed prior to the administration of the arbitration hearing. As of the publication of this report, three percent (3%) of referred cases proceeded to an arbitration hearing and four percent (4%) of referred cases are pending.



ARBITRATION PANEL ADMISSIONS

In 2020, the following individuals were selected for admission to the EDNY Arbitration Panel: Noah Hanft and Salman Ravala.

ADR PROGRAM OUTREACH, TRAINING, AND EVENTS

ADR Department staff planned, participated in, and attended several programs and training events. These outreach efforts include presentations to the legal community, the dispute resolution community, and the EDNY judiciary to raise awareness about EDNY ADR Department programs and initiatives.

February 6, 2020 Managing Attorneys & Clerk’s Association Luncheon, New York, NY

February 20, 2020 New York Fair Employment Agencies and ADR, JAMS, New York, NY

April 7, 2020 Visit Columbia Law School Mediation Clinic, New York, NY (Remote)

April 14, 2020 Nassau County Bar Association Labor and Employment Committee Meeting, Garden City, NY (Remote)

April 24, 2020 Mediating in The Era of Polarization - Columbia Law School Ethics Colloquium, Brooklyn, NY (Remote)

May 29, 2020 Co-Mediating, Why? When? How?, Association for Conflict Resolution of Greater New York, New York, NY (Remote)

June 11, 2020 ADR in a Time of Social Distancing, Federal Bar Council, New York, NY (Remote)

July 21, 2020 Approaches to Mediation, New York Law School Basic Mediation Training, New York, NY (Remote)

July 22, 2020 Perspectives on Practice Development in the Arbitration World, New York State Bar Association, Cardozo Law School, New York, NY (Remote)

October 15, 2020 Federal – State Judicial Council Program “Federal – State Courts Adapting to Covid and Beyond”, New York, NY (Remote)

October 16, 2020 EDNY Section 1983 Mediation Advocacy Training, Federal Bar Council, Brooklyn, NY (Remote)

October 21, 2020 EDNY Law Clerk Orientation, Brooklyn, NY (Remote)

October 24, 2020 Presumptive ADR and Court Systems of the Future, The Cardozo Journal of Conflict Resolution Annual Jed D. Melnick Symposium, Benjamin N. Cardozo School of Law, New York, NY (Remote)

October 29, 2020 Preparing for Mediation and Selecting the Mediator, Mediation Choices for Effective Representation and Advocacy, New York State Bar Association, New York Law School, New York, NY (Remote)

November 13, 2020 Anti-Racism and the Mediator’s Role: Irreconcilable Differences or Ethical Imperative? Columbia Law School Ethics Colloquium, Brooklyn, NY (Remote)

November 19, 2020 Diversity in ADR Event for Law Students, Brooklyn Law School, Brooklyn, NY (Remote)

November 20, 2020 EDNY Zoom Arbitration Workshop, Brooklyn, NY (Remote)

EDNY ADR ADVISORY COUNCIL

Formed in 2017, the EDNY ADR Advisory Council is comprised of members of the EDNY mediation and arbitration panels. The Council assists the ADR Administrator with panel admissions, the development of ethics guidelines and training for EDNY panelists, designing and implementing diversity initiatives, and creating a vision for the future of the Department. EDNY ADR Advisory Council Members serve a two-year term and attend six meetings annually.

Members of the 2020 EDNY Advisory Council include:

David Berger (2020-22)

Richard Brewster (2019-21)

Alida Camp (2017-20)

Joseph DeMarco (2020-22)

Joseph DiBenedetto (2020-22)

Erica Garay (2020-22)

Robin Gise (2020-22)

David Paul Horowitz (2019-21)

Andrew Kimler (2019-21)

Mark C. Morril (2019-21)

Elena Paraskevas-Thadani (2020-22)

Lisa Renee Pomerantz (2020-22)

Paul Radvany (2020-22)

Royce Russell (2020-22)

Vivien B. Shelanski (2019-21)

Martin Siegel (2020-22)

IMPACT OF COVID-19 ON EDNY ADR PROGRAM

On March 15, 2020 the EDNY Courthouse required that most staff work remotely to minimize the health and safety risks caused by the Covid-19 Pandemic. In March 2020, the ADR Department began providing remote mediation and arbitration services via video conferencing platforms. Prior to the pandemic, the EDNY ADR Department conducted mediation and arbitration services exclusively in person,

Remote mediation services began on March 26, 2020 and EDNY ADR services remain remote through the date of the publication of this report. Between March 26, 2020 – December 31, 2020, four hundred and thirty-one (431) cases were mediated remotely. During that period, sixty-two percent (62%) of the mediated cases were settled. Most remote mediations took place with the use of an online video conferencing platform, and a small number were mediated via telephonic conference call.

The first remote EDNY arbitration hearing took place via a video conference platform on August 10, 2020. Four remote arbitration hearings were held during the period of March 26, 2020 – December 31, 2020.

Throughout the summer and fall of 2020, the EDNY ADR Department conducted several workshops for panel mediators and arbitrators to provide them with the necessary skills to conduct mediations and arbitrations online. Mediators and arbitrators able to offer remote services were coded as such on the court's website here: <https://www.nyed.uscourts.gov/adr/>. The EDNY ADR Department also developed a new remote confidentiality stipulation, as well as remote guidelines and instructions for mediators, arbitrators, counsel and parties, all of which are available on the Court's website here: <https://www.nyed.uscourts.gov/adr-forms>.

The EDNY ADR Department also held all remote CLE programming, workshops, and trainings via a video conference platform.